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No. 95-310

In The

Supreme Court of the United States

October Term, 1995

ST. JUDE HOSPITAL OF KENNER, LOUISIANA, INC., ST. JUDE MEDICAL OFFICE BUILDINGS LIMITED PARTNERSHIP and KROWN DRUGS, INC.,

Petitioners,

vs.

THE TRAVELERS INSURANCE COMPANY,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the district court on remand departed from the accepted and usual course of judicial proceedings by calculating interest in accordance with the opinion of the court of appeals and the Louisiana law of solidary obligations?

2. In view of the power of a court of appeals to interpret its mandates, whether the court of appeals sanctioned a departure by the district court from the accepted and usual course of judicial proceedings by affirming the district court's calculation of interest in accordance with its prior ruling and the Louisiana law of solidary obligations?

STATEMENT UNDER RULE 29.6

In accordance with Rule 29.6 of the Supreme Court, respondent, The Travelers Insurance Company, advises that its parent, The Travelers Corporation, has issued shares of common and preferred stock to the public. Respondent further advises that it has no subsidiaries whose stock is publicly traded.

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RESPONDENT'S BRIEF IN OPPOSITION

TO THE HONORABLE SUPREME COURT:

The Travelers Insurance Company ("Travelers" or "Respondent"), through its undersigned counsel, respectfully requests this Court to deny the petition for a writ of certiorari submitted by petitioners, St. Jude Hospital of Kenner, Louisiana, Inc. ("St. Jude Hospital"), St. Jude Medical Office Buildings

Limited Partnership (the "Partnership"), and Krown Drugs, Inc. ("Krown") (collectively, the "Petitioners").

STATEMENT OF JURISDICTION

28 U.S.C. §1254(1) confers jurisdiction on this Court to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on May 24, 1995.

STATUTORY PROVISIONS INVOLVED

This petition involves issues of the Louisiana law of solidary obligations and requires interpretation of articles 1794 and 1797 of the Louisiana Civil Code. Respondent includes these articles in its appendix.

STATEMENT OF THE CASE

A. Factual Background

This is a Louisiana collection suit brought to compel the Partnership as a solidary obligor to pay a judgment. Focusing on narrow issues of discretionary procedure, Petitioners ask the Court to review a substantively correct decision of the court of appeals. This kind of "picayune" appellate effort by Petitioners against Travelers has been typical — in the last five years, Petitioners' litigation machinery has generated at least four separate civil actions, two Chapter 11 proceedings, and six collateral actions challenging various judgments in favor of Travelers. *See, e.g., Travelers Ins. Co. v. St. Jude Hospital of Kenner, La., Inc.*, 37 F.3d 193, 194 n.3 (5th Cir. 1994). The Fifth Circuit has repeatedly commented on the "continuing" litigation marked by Petitioners' repeated, belated and "extremely intemperate" pleadings. *Travelers Ins. Co. v. Liljeberg Enterprises, Inc.*, 38 F.2d 1404, 1405 (5th Cir. 1994). Indeed, this Court recently denied a previous certiorari effort by an affiliate of

Petitioners, St. Jude Hospital of Kenner, La., Inc. *St. Jude Hospital of Kenner, La., Inc. v. Travelers Ins. Co.*, __ U.S. __, 115 S. Ct. 1696, 131 L. Ed. 2d 559 (1995). Travelers shows below why this latest attempt should also be denied.

St. Jude Hospital was founded by John and Robert Liljeberg to develop an acute care hospital in Kenner, Louisiana in 1983. Needing to provide office space for the hospital physicians, St. Jude Hospital formed a Louisiana limited partnership, the St. Jude Medical Office Buildings Limited Partnership, and donated property adjacent to the hospital to the Partnership for the construction of the St. Jude Medical Office Building (the "MOB"). In consideration of that transfer, St. Jude Hospital was named the Partnership's sole general partner.

Another entity controlled by the Liljebergs, Liljeberg Enterprises, Inc. ("LEI"), initially leased space in the MOB from the Partnership in an agreement dated May 1, 1985. Under this first lease, LEI rented 11,893 square feet of the building for a ten-year term from August 1, 1985, to July 31, 1995, at a monthly rate of $14,866.25. The Partnership was authorized to grant a mortgage on the MOB to an "Institutional Mortgagee," defined to include insurance companies like Travelers. On May 1, 1987, LEI entered into a second lease with the Partnership for an additional 1,800 square feet in the MOB. This lease was for a five-year term and had a monthly rental of $2,250; it was identical in form as to the first lease.[1] Still another entity controlled by the Liljebergs, Krown, executed a lease with the Partnership for space in the MOB.[2]

On October 10, 1985, Travelers loaned the Partnership $25,000,000. Of that loan amount, approximately $19,000,000

1. Travelers refers to the May 1, 1985, LEI lease and the May 1, 1987, LEI lease collectively as the "LEI Leases."

2. Travelers refers to this lease as the "Krown Lease."

was used to pay the construction lender and the balance of $6,000,000 was retained by the Partnership. To secure the debt, the Partnership granted a real and chattel mortgage that encumbered the MOB, its improvements (including tenant improvements), and all "corporeal movables" — personal property of any type owned by the Partnership and located at the MOB. The Partnership also granted to Travelers an assignment of all of the Partnership's rights under any leases of space in the MOB. Included among the assigned leases were the LEI Leases and the Krown Lease.

During the next five years, the Partnership used Travelers' funds to make loans to its affiliates, LEI and Krown, and its insiders, the Liljebergs, and to pay a portion of the interest owed to Travelers. Although the Partnership repeatedly represented to Travelers that it timely collected all rents, the Partnership permitted Krown and LEI to avoid payment of rent owned under the leases assigned to Travelers. By early 1990, the Partnership had exhausted the funds loaned by Travelers, and the Partnership quickly defaulted in repayment of the loan. Travelers demanded payment of the loan. The Partnership, St. Jude Hospital and the Liljebergs responded with threats to render the MOB uninhabitable by terminating water service and blocking its sewerage and storm drainage system, which ran under neighboring property owned by St. Jude Hospital. When Travelers indicated that it would pursue foreclosure, the Partnership, Liljebergs and LEI responded by stripping tenant improvements from the MOB.

B. Procedural Background

Faced with the destruction of its collateral and the Partnership's refusal to cure its default, Travelers instituted this case, a diversity action in the United States District Court for the Eastern District of Louisiana, against the Partnership, St. Jude Hospital, LEI, Krown, and the Liljebergs (the "Partnership Litigation").

Travelers' suit involved several claims. The first claim concerned the Partnership's March of 1990 default of the promissory note executed in favor of Travelers in October of 1985, which was secured by the real and chattel mortgage executed by the Partnership. Another claim related to Travelers' exercise of its assigned rights under the LEI Leases and the Krown Lease. The third claim referenced the Liljeberg's threats to terminate water and sewage service to the MOB in the Spring of 1990. The fourth claim arose from the Liljebergs' clandestine removal of furniture, fixtures and equipment from the MOB in late May of 1990. The final claim involved environmental damage to the real estate encumbered by Travelers' mortgage. Travelers also requested attorneys' fees and costs. Significantly, Travelers asserted a solidary theory of liability against the Partnership and Krown for the unpaid rent of Krown for tortious misrepresentation (against the Partnership) and breach of contract (against Krown).

The district court entered a partial summary judgment in favor of Travelers recognizing and enforcing its real and chattel mortgage liens in and to the MOB and movable property and authorized their judicial sale. After a trial on the merits of the remaining claims, the Court entered a judgment dated August 18, 1992 (the "Judgment").[3] At paragraph 2 of that ruling, the district court ruled that the Partnership and Krown were solidarily liable. The Partnership filed a motion for new trial or, alternatively, to alter the Judgment. The district court entered an amended judgment on December 3, 1992 (the "First Amended Judgment").[4] Significantly, in the order and reasons for the First

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3. Petitioners' Appendix, pp. A-33 to A-50 (hereinafter, "P. App.").

4. P. App., pp. A-78 to A-95. The Court rendered an opinion in connection with the First Amended Judgment. P. App., pp. A-51 to A-77.

(Cont'd)

Amended Judgment, the district court reiterated the solidary liability of the Partnership with Krown:

> This Civil Code article sets forth one of the effects of solidary obligations in Louisiana. If it applies to these parties, it will do so at the time Travelers executes whatever final judgment results from these proceedings. It does not change the result obtained herein. The judgment correctly states that MOB, being liable for the same damages as LEI and Krown, is solidarily liable with them. Therefore, the Court finds no error in paragraphs 1 and 2 of the judgment so as to warrant any amendment.

P. App., p. A-65.

Because the Partnership's *individual* liability arose from a claim of tortious misrepresentation, the district court amended the Judgment to reflect the source of that individual liability concerning interest. The First Amended Judgment in no way modified the Partnership's status as a solidary obligor with Krown. Petitioners contend that the First Amended Judgment "reflected the court's adoption of the Partnership's position that it was liable for interest on the judgment at the judicial rate, rather than the contractual rates specified in the LEI and the Krown Leases."[5] Travelers disputes this contention. As shown above, the order and reasons accompanying the First Amended Judgment explicitly recognized the solidary nature of the

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(Cont'd)

Travelers Ins. Co. v. St. Jude Hospital of Kenner, La., Inc. (E.D. La. 1992) (No. 90-1983 c/w 90-2601; unpublished).

5. Petitioners' brief, p. 6.

Partnership's debt to Travelers and, accordingly, the prospect of recovery against the Partnership for all amounts owed by Krown.

The First Amended Judgment was appealed by both parties. Noting that the commercial activities of the Partnership, St. Jude Hospital, LEI, Krown, and the Liljebergs constituted an "egregious and unconscionable course of bad faith contractual dealings as the members of this panel can recall having encountered," the court of appeals issued an opinion concerning the First Amended Judgment on April 20, 1994.[6] The court of appeals affirmed the district court except to remand the case (1) to supplement the First Amended Judgment to quantify an award to Travelers of its reasonable attorneys' fees and (2) to determine the appropriate rate used in calculating pre-judgment interest on the *LEI Leases* in accordance with article 2924 of the Louisiana Civil Code. The Fifth Circuit issued a mandate on May 31, 1994.[7] In accordance with the court of appeals' instructions on remand, the district court in order and reasons issued on October 21, 1994, quantified Travelers' reasonable attorneys' fees and determined that the prejudgment interest on the LEI Leases had been properly calculated at the judicial rate.[8]

On November 3, 1994, the district court entered its second amended judgment (the "Second Amended Judgment") in the amount of $7,784,385.75. This figure appropriately included

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6. P. App., pp. A-122 to A-139. *Travelers Ins. Co. v. St. Jude Hospital of Kenner, La., Inc.*, 21 F.3d 1107 (5th Cir. 1994). Petitioners refer to this ruling in their petition as "Travelers II."

7. P. App., pp. A-140 to A-144. *Travelers Ins. Co. v. St. Jude Hospital* (5th Cir. 1994) (92-9579; unpublished).

8. P. App., pp. A-145 to 156. *Travelers Ins. Co. v. St. Jude Hospital of Kenner, La., Inc.* (E.D. La. 1994) (No. 90-1983 c/w 90-2601; unpublished).

prejudgment interest on the award given in connection with the Krown Lease at the contractual rate pursuant to the provision in the First Amended Judgment that the Partnership be solidarily liable with Krown.[9] On appeal, the court of appeals affirmed the district court's Second Amended Judgment.[10] The court of appeals found unpersuasive the Partnership's arguments that the Second Amended Judgment conflicted with the decision of the court of appeals rendered in other litigation.[11] Petitioners filed their petition for a writ of certiorari with this Court on or about August 20, 1995.

REASONS FOR DENYING THE WRIT

The legal issues presented by the petition do not warrant the attention of the Court. This proceeding does not involve a conflict in the circuits, raises no unresolved issue of federal law, relates solely to Louisiana legal issues, and affects only the litigants involved in this case. In this case, pursuant to the Louisiana law of solidary obligations, Travelers obtained a judgment against the Partnership and Krown as solidary obligors

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9. P. App., pp. A-157 to A-159.

10. P. App., pp. A-1 to A-12. *Travelers Ins. Co. v. St. Jude Hospital of Kenner, La., Inc.*, 56 F.3d 1386 (5th Cir. 1994). Petitioners refer to this ruling as "Travelers III."

11. In an apparent attempt to obfuscate the issues to be considered here, Respondents refer the Court to proceedings involving the LEI Leases (the "Lease Litigation"). (Petitioners refer to this ruling as "Travelers I".) Travelers is confused by these references. The Lease Litigation involved the LEI Leases, which were distinct from the Krown Lease at issue in the Partnership Litigation: The LEI Leases required prejudgment interest at the legal rate stated in article 2921 of the Louisiana Civil Code and the Krown Lease at issue in this case involved interest calculated at a contractual rate. This reference to the Lease Litigation is a classic "red herring" that the Court should ignore.

and collected from the Partnership the amount owed by Krown. The court of appeals adhered to the law of the case in authorizing this course of action; indeed, Petitioners do not dispute that the calculation of interest owed under the Krown Lease was incorrectly calculated or that the lower courts improperly found the Partnership and Krown to be solidary obligors. In essence, Petitioners ignore the substantive correctness of the opinion of the court of appeals and ask the Court to bind the Fifth Circuit with "hypertechnical handcuffs" based on an overly narrow reading of the law of the case doctrine and the rule of mandate. In filing their petition, Petitioners ignore the discretionary nature of the law of the case doctrine and the power of a court of appeals to interpret its prior mandates. For these reasons, which Travelers sets forth more fully below, the Court should deny the petition for a writ of certiorari.

I.

THE DECISION OF THE COURT OF APPEALS DID NOT SUBSTANTIALLY DEPART OR SANCTION A DEPARTURE FROM THE USUAL COURSE OF PROCEEDINGS BECAUSE THE COURT OF APPEALS' RULING ON THE LOUISIANA LAW OF SOLIDARY LIABILITY ENTITLED TRAVELERS TO THE SECOND AMENDED JUDGMENT.

Petitioners' blind adherence to the discretionary law of the case doctrine stampedes another, more established principle, federalism. Petitioners, particularly the Partnership, completely ignore the fact that, as a matter of state law in this diversity case, Travelers was entitled to obtain a judgment against the Partnership and Krown under a solidary theory of liability and under that theory collect from the Partnership the amount owed by Krown. The district court, in rendering the Second Amended Judgment, understood this, as did the court of appeals when it

affirmed the Second Amended Judgment in accordance with its prior rulings.

As a matter of Louisiana law, Travelers was entitled to collect from the Partnership the amount owed by Krown to Travelers. The Louisiana Civil Code and the decisions of Louisiana state courts definitively establish that a claimant may obtain a judgment against solidary obligors and may collect from either what the other owes — even if the liability of each solidary obligor arises from different sources. The decisions of the courts below properly reflect this state law.

Article 1794 of the Louisiana Civil Code states as follows:

> *An obligation is solidary for the obligors when each obligor is liable for the whole performance.* A performance rendered by one of the solidary obligors relieves the others of liability toward the obligee.

(Italics added.) "An obligation may be solidary though it derives from a different source for each obligor." La. Civ. Code. art. 1797. *See also, Payne v. O'Quinn*, 565 So.2d 1049 (La. App. 3rd Cir. 1990). One commentator has stated in that vein:

> In other words, it does not matter whether the obligation is conventional for each obligor, or whether all obligors are at fault, or whether only one is at fault while the liability of the other is only vicarious, provided that each obligor is bound to render the whole of one and the same performance and to do so in such a way that performance by one will extinguish the obligation of all *vis-á-vis* the obligee.

S. Litvinoff, *5 Louisiana Civil Law Treatise* §7.68 (1992)(footnote omitted).

The Louisiana Supreme Court in *Narcise v. Illinois Cent. Gulf R.R.*, 427 So.2d 1192 (La. 1983), expounded upon the underpinning of solidary liability and confirmed that parties may be liable solidarily though their individual liability arises from entirely different duties. In this regard, the Supreme Court opined as follows:

> Article 2092 [now Article 1797] specifically provides that an "obligation may be *in solido* although one of the debtors be obliged differently from the other, to the payment of one and the same thing." It is the coextensiveness of the obligations for the same debt, and not the source of liability, that determines the solidarity of the obligation.... The fact of different defenses, different prescriptive periods, different beneficiaries in some cases, and different elements of damages does not detract from the *in solido* nature of the obligation of the two debtors. These factors may be significant in determining the existence and extent of the liability of each debtor toward the plaintiff. However, once the extent of each debtor's liability has been determined, there is an *in solido* obligation as to their common liability to the injured party. *While one item of damages may be recoverable against one debtor and not the other, the parties are liable* in solido *as to every item for which plaintiff can compel payment from either.*

Id. at 1195 (italics added).

As the lower courts properly understood, the Supreme Court ruling in *Narcise* dictates that the Partnership is liable for the same damages as its solidary obligor, Krown. Those damages include contractual interest owed by Krown under the Krown Lease. Although the Partnership may have some right of reimbursement from Krown, the Partnership is liable as a solidary obligor for the entire amount of Krown's damages to Travelers.

The court of appeals properly understood this when it expressly stated that Travelers is free to collect from one solidary obligor all damages due Travelers from any of the solidary obligors. In its April 20, 1994, opinion, which formed the basis for its May 31, 1994, mandate, the court of appeals specifically noted this aspect of Louisiana law:

> We turn finally to the question of the proper rate to be applied in pre-judgment interest, an element of recovery which the jury determined that Travelers is entitled to receive. Travelers' position on this issue is stated in its brief: [the Liljeberg defendants are] properly liable for all damages flowing from [their] misrepresentation including all unpaid rent and interest at the contract rate . . . The accrued interest is an integral part of the damages caused by the [defendants] and should not be segregated from the outstanding rental." Travelers argues the Cross-Appellees' contrary position is, in essence, a red herring intended to obfuscate the solidary liability of those parties by distinguishing the genesis of liability along tort and contractual lines. **Our reading of the decision of the Louisiana Supreme Court**

> **in *Narcise v. Illinois Central Gulf Railroad Co.*, to the effect that — regardless of the legal nature of the liability of the solidary obligors, *i.e.*, irrespective of the fact that some may be liable in contract and other in tort — each solidary obligor is liable to the obligee for 100% of the indebtedness owed by each other co-obligor, convinces us that Travelers is correct.**

P. App., pp. A-131 to 132. (emphasis added).

The court of appeals was faced directly with Travelers' position that it was entitled to collect from any co-obligor any amounts due by each and with Petitioners' position that the Partnership and Krown could only be compelled to pay those damages for which each is liable in an individual capacity. The court of appeals clearly accepted Travelers' position and rejected that of Petitioners. Accordingly, Travelers could collect from the Partnership whatever was owed by Krown.

The Fifth Circuit correctly affirmed the Second Amended Judgment, which held the Partnership liable, as a solidary obligor and not in its individual capacity, for those amounts owed by Krown. Directly addressing Petitioners' present arguments that the district court had stated in the order and reasons accompanying the First Amended Judgment that "the Partnership . . . shall be solidarily liable with Krown . . . or interest occurring on the principal amount only to the extent of the applicable judicial rate [for prejudgment interest]," the Fifth Circuit explained as follows:

> We resolve this discrepancy by interpreting *Travelers II* to mean that Travelers is entitled to the contract rate of prejudgment interest

> regarding the Krown lease obligations. *Travelers II* explicitly embrace Travelers' position. *See Travelers II* at 6-7 (noting Travelers' position that defendants are liable for "all unpaid rent and interest at the contract rate" and concluding that "Travelers is correct"). We find this expression by the panel more compelling than its reference to "leaving undisturbed a ruling" [the First Amended Judgment] alluded to but not expressly explained. Thus the district court correctly observed that this Court had approved Travelers' entitlement to collect the contract rate of interest on the Krown lease.

P. App., pp. A-11 to 12. In so doing, the Fifth Circuit properly interpreted the Louisiana law of solidary liability. Certiorari review on this issue is not needed.

II.

THIS COURT SHOULD NOT ADHERE TO THE PETITIONERS' MECHANISTIC APPLICATION OF THE LAW OF THE CASE DOCTRINE AND INTERVENE IN THIS LOUISIANA COLLECTION SUIT.

Petitioners argue that Supreme Court Rule 10.1(a) authorizes this Court to review the May 24, 1995, decision of the court of appeals because that opinion ignored "the law of the case and thus sanctioned a departure by the district court from the accepted and usual course of judicial proceedings." These contentions are without merit. The law of case doctrine is by its nature a discretionary doctrine and not a limitation on the power of an appellate court. Moreover, a court of appeals possesses the power not only to interpret but also, if necessary, recall and

change its mandates. Finally, this discrete matter affects only the litigants to this proceeding and is of no public importance. The Court should employ its limited resources for important cases; this is not one.

A. Petitioners Ignore The Discretionary Nature Of The Law Of The Case Doctrine.

The Supreme Court of the United States long ago recognized that the law of the case doctrine is discretionary. As Justice Holmes expounded,

> [i]n the absence of statute the phrase, "law of case," as applied to the effect of previous orders on the later action of the court rendering them in the same case, merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power.

Messinger v. Anderson, 225 U.S. 436, 444, 32 S. Ct. 739, 740, 56 L. Ed. 1152 (1912) (citations omitted). "Law of the case directs a court's discretion, it does not limit the tribunal's power." *Arizona v. California*, 460 U.S. 605, 618, 103 S. Ct. 1382, 1391, 75 L.Ed.2d 319 (1983). Courts have accordingly reasoned that "[t]he doctrine is discretionary and not an inexorable command that rigidly binds a court." *In re Evangeline Refining Co.*, 890 F.2d 1312, 1321-22 (5th Cir. 1989).

Even where the law of the case doctrine applies, federal courts have recognized exceptions for new evidence, changes of law, and clearly erroneous prior decisions that manifest injustice. *United States v. McClain*, 593 F.2d 658, 664-65 (5th Cir.), *cert. denied*, 444 U.S. 918, 100 S. Ct. 234, 62 L. Ed. 2d 173 (1979). *See also, In re Evangeline Refining Co.*, 890 F.2d at 1322; *Browning*

v. Navarro, 887 F.2d 553, 556 (5th Cir. 1989) (reasoning that "[w]e have the discretion to ignore a previous decision if substantially different evidence has been presented, there has been an intervening change in the law, or the prior decision was clearly erroneous and it would work a manifest injustice"). A court may always reconsider its own ruling to avoid perpetrating error. *In re Cajun Electric Power Co-op, Inc.*, 791 F.2d 353, 365 (5th Cir. 1986).

Even assuming the court of appeals did not adhere to its May 31, 1994, mandate, a court of appeals clearly possesses the discretion to disregard the law of the case and to correct errors in the interest of justice. Here, as illustrated above, the Louisiana law of solidary obligations plainly allows for creditors such as Travelers to enforce from each solidary co-obligor the obligation owed by the other. In rendering the May 24, 1995, ruling, the court of appeals possessed the discretion under the law of the case doctrine to correct an erroneous prior mandate to comply with that authority. Petitioners ignore this discretionary authority when they ask this Court to grant their petition based on their incorrect reading of Louisiana solidary obligations law.

B. Petitioners Ignore That The Courts Of Appeals Possess The Power To Interpret And Recall Any Mandate.

Courts of appeals are vested with the authority to interpret their own mandates. *In re Sanford Fork & Tool Co.*, 160 U.S. 247, 256, 16 S. Ct. 291, 293, 40 L. Ed. 414 (1895). *See also, In re Ivan F. Boesky Sec. Litig.*, 957 F.2d 65, 69 (2nd Cir. 1992); *Burton v. Johnson*, 975 F.2d 690, 693 (10th Cir. 1992), *cert. denied*, __ U.S. __, 113 S. Ct. 1879, 123 L. Ed. 2d 497 (1993). To that end, the local rules of the United States Court of Appeals for the Fifth Circuit specifically authorize the courts of appeals to reform their mandates when necessary to prevent injustice. Fifth Circuit Rule 41.2; *Home Life Ins. Co. v. Equitable Equip. Co.*, 694 F.2d 402,

403 (5th Cir. 1982). *See also, In re Incident Aboard the D/B OCEAN KING on August 30, 1980*, 877 F.2d 322, 323 (5th Cir. 1989).

Consistent with the discretionary nature of the law of the case doctrine, the jurisprudence and the local rules of court allow the court of appeals to interpret and recall its mandates. That authority undercuts Petitioners' notion that the law of the case is under all circumstances ironclad and not subject to subsequent modification. Even assuming the correctness of Petitioners' position that the lower courts exceeded the scope of the mandate, the court of appeals could have merely recalled its mandate to describe with more explicitness its ruling on the Partnership's liability as a solidary co-obligor with Krown — a ruling that Petitioners concede and on which they apparently do not seek certiorari review. Indeed, there is nothing that would disallow the court of appeals from recalling its mandate now so as to conform it to its allegedly incorrect subsequent ruling. In their mechanistic application of the rule of mandate, Petitioners place form over substance and ignore the power of the court of appeals to interpret and modify mandates.

C. This Case Is Not Worthy Of Supervisory Review By The Court.

This case lacks significance. It affects only the litigants involved in this proceeding, raises no novel issues of unresolved law, concerns no conflict in the circuits, relates to no important federal question in conflict with the decision of a state court of last resort, and is intertwined with issues of Louisiana state law concerning the scope of solidary obligations. Travelers urges the Court not to exercise its judicial discretion here and to deny the petition.

CONCLUSION

This Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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APPENDIX A — RELEVANT STATUTES AND RULE

Louisiana Civil Code Article 1794

> An obligation is solidary for the obligors when each obligor is liable for the whole performance. A performance rendered by one of the solidary obligors relieves the others of liability toward the obligee.

Louisiana Civil Code Article 1797

> An obligation may be solidary though it derives from a different source for each obligor.

Fifth Circuit Rule 41.2

> A mandate once issued shall not be recalled except to prevent injustice.